



File

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: [REDACTED]

Contact Person: [REDACTED]

Identification Number: [REDACTED]

Telephone Number: [REDACTED]

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were organized on [REDACTED], as a [REDACTED] corporation. Your Certificate of Incorporation identifies your purposes as being:

To own, operate, and maintain a membership club, club houses, club rooms, recreation centers, and reception and assembly rooms for the purpose of providing for the members' entertainment, sport, recreation, and amusement of all kinds; to furnish, equip, decorate, and fit up such clubs and club rooms; to promote social and friendly intercourse among the members of such club or among their guests; to provide and supply any and all appurtenances that may be necessary, useful or convenient for the carrying on of sports, recreations and diversions of all kinds and description for the entertainment, welfare and convenience of the members and their guests and friends.

Your [REDACTED], adopted by the Board of Directors of [REDACTED], identifies your objectives as being:

- a. To promote better understanding of [REDACTED] among [REDACTED] and [REDACTED] through meetings, seminars, news media bulletins and by holding various socio-cultural activities;
- b. To demonstrate and clarify [REDACTED] culture, ideology, values and traditions;
- c. To establish relations and seek cooperation from other organizations having similar objectives; and,
- d. to guide and help any [REDACTED]

[REDACTED]

Neither your Certificate of Incorporation nor your Constitution contains language providing for the distribution of your assets on dissolution nor do they contain provisions governing potential conflicts of interest.

According to your application, your proposed activities include:

- a. celebrating national days [REDACTED]
- b. arranging seminars to educate [REDACTED] youngsters about [REDACTED] and its culture;
- c. organizing [REDACTED] cultural shows;
- d. interacting between various visiting [REDACTED] social and cultural delegations and [REDACTED] community in U.S.A.; and,
- e. educating new immigrants from [REDACTED] about American culture and values.

You state that you have no formal application form for membership. Your Constitution provides that only members of your board of directors constitute your members. It further provides that all [REDACTED] and Americans [REDACTED] are eligible to apply for membership. The qualifications listed for board members are:

1. U.S. Citizen or a legal permanent resident in the USA of [REDACTED] origin;
2. Over 21 years of age;
3. Must be a person of good standing in the community with no criminal record; and,
4. Willing and capable of helping the league financially either by his own resources or by raising the money from other sources.

Nineteen directors signed your Constitution. On the letterhead used as an attendance sheet for [REDACTED] there were thirty-two board members listed.

You stated that your support is solicited mostly from members through verbal appeals. In your application, you listed your sources of financial support in order of size as being from membership dues and donations. The financial data provided in your application shows your income for [REDACTED] as having been received totally from membership fees. The financial statements that you furnished for the periods ending [REDACTED] to [REDACTED] show your support as coming from membership dues, public support and contributions. We had also asked that you furnish information regarding your income and expenses for the period from [REDACTED] to [REDACTED]. You did not provide financial information for this period.

You have asked to be classified as a public charity under section 509(a)(2) as an organization normally receiving not more than one-third of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions.

[REDACTED]

You stated that the benefits your members receive in exchange for their payment of dues are enjoying social and cultural activities and exchanging ideas with visiting [REDACTED]. We asked for additional information regarding your hosting [REDACTED] social or cultural delegations, and for information regarding the specific benefits provided to your members. You did not provide this information.

Expenses for seminars and conferences and for festivals are reflected in your financial statements. You stated that you organize various national and social events as well as various seminars. You further stated that you have organized music shows and talk shows with the visiting social, political, and religious leaders from [REDACTED]. In response to our request for flyers, brochures, etc. related to these activities, you submitted copies of a flyer for a breakfast program you hosted with the [REDACTED] and several flyers and other information related to annual [REDACTED] independence day events you have held. You also submitted copies of invitations to three events you hosted: an invitation only program to celebrate [REDACTED] independence Day; an oath taking ceremony of the executive board, and, a celebration to honor the [REDACTED]. You did not respond to our questions concerning the seminars and conferences and how they are conducted.

Section 501(c)(3) of the Code provides for exemption from federal income tax of organizations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 501(c)(4) of the Code provides for the exemption from federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

Limit the purposes of such organization to one or more exempt purposes; and

Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(ii) of the regulations provides that in order to meet the organizational test, the organization's purposes must be specified in its articles. They may be as broad as, or more specific than, the purposes stated in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(b)(2) of the regulations defines the term articles as including the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) defines the words "private shareholder or individual" in Code section 501 as referring to persons having a personal and private interest in the activities of the organization.


Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized and operated exclusively for charitable purposes unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of government; promotion of social welfare.

Section 1.501(c)(3)-1(d)(3) of the regulations states that the term "educational" as used in section 501(c)(3) of the Code relates to the instruction or training of the individual for the purpose of improving or developing his capabilities; or the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(4)-1(a)(2)(i) of the regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the community. An organization embraced within this section is one that is operated primarily for the purpose of bringing about civic betterments and social improvements.

In Better Business Bureau v. United States, 316 U.S. 279 (1945), the Court held that the existence of a single non-exempt purpose, if substantial in nature, will destroy a charitable exemption.


In Old Dominion Box Co. v. United States, 477 F2d. 344 (4th Cir. 1973) cert. denied, 413 U.S. 910 (1973), the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), holds that an organization seeking a ruling as to recognition of its tax-exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

In Christian Manner International, Inc. v. Commissioner, 71 T.C. 661 (1979), the Court held that both the actual as well as the stated purposes for the existence of an organization and the activities it engages in to accomplish those purposes must be considered. What those purposes are and what purposes the activity or activities engaged in support are questions of fact. See also Pulpit Resource v. Commissioner, 70 T.C. 594 (1978).

In St. Louis Science Fiction Limited v. Commissioner, T.C. Memo 1985-162 (1985), the court held that while an organization's conventions may have provided some educational benefit to the individuals involved, the predominance of social and recreational purposes meant that it had failed to establish that it was operated exclusively for educational purposes. The court reasoned that while some of the activities were educational, a substantial portion of the activities served predominantly social and recreational purposes, including gaming facilities, movie and video rooms, masquerades and other parties, a hospitality room, an art show, and certain panel discussions.

In Spanish American Cultural Association of Bergenfield v. Commissioner, T.C.M. 1994-510 (1974), the court held that an organization that was organized in order to foster the cultural heritage of Bergenfield's Spanish-American residents was not exempt under section 501(c)(3) of the Code where its charitable activities were insubstantial and incidental to its social and recreational activities. In addition to conducting various activities, the organization proposed building a center that the organization stated would be a place for members to congregate in addition to being a place where others could learn more about Spanish culture. The court concluded that given the substantial social nature of the organization's activities to date and its planned activities, substantial social activity would be conducted at the center. In determining this, the court noted a statement made by the organization: "(The organization) is trying to acquire and hold on to greater and greater numbers of members and is doing so by the social and cultural affairs that it runs. The theory here is obviously, the greater the number of active member [sic] the greater the fund raising ability and the greater the end result towards the target purposes."

Schoger Foundation v. Commissioner, 76 T.C. 380 (1981), holds that failure to meet the "distribution of assets on dissolution" requirement of section 1.501(c)(3)-1(b)(4) of the Income Tax Regulations is adequate grounds for the denial of tax exemption as a section 501(c)(3) organization.

[REDACTED]

Rev. Rul. 59-310, 1959-2 C.B. 146, holds that a nonprofit corporation organized for the purpose of establishing, maintaining and operating a public swimming pool, playground and other recreation facilities for the children and other residents of a community is exempt from Federal income tax under section 501(a) of the Internal Revenue Code of 1954 as a charitable organization described in section 501(c) (3) thereof.

Rev. Rul. 67-148, 1967-1 C.B. 132, holds that a nonprofit organization formed to study, research, and reenact Civil War battles is exempt under section 501(c)(3) of the Income Tax Code. The ruling notes that an organization may qualify for exemption as an educational organization even though it does not offer formal instruction or training but merely provides an opportunity for an individual to educate himself through observation of, or participation in, the organization's activities.

Rev. Rul. 67-325, 1967-2 C.B. 113, holds that an organization which provides recreational facilities without charge to the residents of a township is not organized and operated exclusively for charitable purposes where the basis for charitable qualification is dedication of the facilities involved to community use and the use of the facilities is restricted to less than the entire community on the basis of race.

Rev. Rul. 68-224, 1968-1 C.B. 224, holds that a nonprofit organization that conducts an annual festival centered around regional customs and traditions may qualify for exemption under section 501(c)(4). The organization provides the community with recreation and provides a means for citizens to express their interest in the community's history, customs, and traditions.

Rev. Rul. 71-545, 1971-2 C.B. 235, holds that an organization exhibiting historical events, cultural achievements, and products of various nations is engaged in an activity exempt under section 501(c)(3) of the Internal Revenue Code.

Rev. Rul. 76-205, 1976-1 C.B. 154, holds that a nonprofit organization formed to aid immigrants in overcoming social, cultural, and economic problems by providing personal counseling, referrals to helpful agencies, social and recreational activities, instruction in English, and distributing a newsletter containing information on attaining citizenship, securing housing, and obtaining medical care is operated exclusively for charitable and educational purposes and qualifies for exemption under IRC 501(c)(3).

In order to qualify for exemption under section 501(c)(3), the organization must show that it is organized and operated exclusively for an exempt purpose. Sections 1.501(c)(3)-1(a)(1), (b) and (c) of the regulations.

Section 1.501(c)(3)-1(d)(2) of the regulations requires that an organization be created for and limited to, except insubstantially, one or more of the purposes enumerated in the regulations. An organization's articles of organization must limit its purposes to one or more exempt purposes. Section

[REDACTED]

1.501(c)(3)-1(b)(1) of the regulations. In your Certificate of Incorporation, you state that the purposes for which you are organized are to:

To own, operate, and maintain a membership club, club houses, club rooms, recreation centers, and reception and assembly rooms for the purpose of providing for the members' entertainment, sport, recreation, and amusement of all kinds; to furnish, equip, decorate, and fit up such clubs and club rooms; to promote social and friendly intercourse among the members of such club or among their guests; to provide and supply any and all appurtenances that may be necessary, useful or convenient for the carrying on of sports, recreations and diversions of all kinds and description for the entertainment, welfare and convenience of the members and their guests and friends.

From the document, it appears that you were created for the purpose of benefiting private parties, which is a substantial non-exempt purpose. Old Dominion Box Co., supra.

Your Constitution, dated several years after the filing of your Certificate of Incorporation, presented broader purposes. However, it appears that the Certificate of Incorporation that was filed in the State of New York was never amended to reflect a charitable purpose within the meaning of section 501(c)(3).

An organization must dedicate its assets to an exempt purpose in order to show that it is organized exclusively for one or more exempt purposes. Sec. 1.501(c)(3)-1(b)(4) of the regulations. Failure to meet this requirement can lead to a denial of recognition of exemption. Schoger Foundation, supra. Neither the Certificate of Incorporation nor your Constitution contains a clause that provides for the distribution of your assets upon dissolution for an exempt purpose within the meaning of section 501(c)(3). Furthermore, you have not shown that the distribution of the assets for an exempt purpose would occur upon your dissolution through operation of law.

An organization seeking exemption under section 501(c)(3) bears the burden of establishing that it satisfies the organizational and operational tests set forth in the regulations. Harding Hospital, supra. You have failed to meet this burden.

You have been incorporated for approximately [REDACTED]. You were asked to provide details about the activities that you proposed conducting in your application: [REDACTED] national days of [REDACTED]; arranging seminars to educate [REDACTED] about [REDACTED] and its culture; organizing [REDACTED] cultural shows; interacting between various visiting [REDACTED] social and cultural delegations and American [REDACTED] community in U.S.A.; and, educating new immigrants from [REDACTED] about [REDACTED] culture and values.

You provided no information directly related to the charitable purposes of educating youths, organizing cultural shows and educating immigrants. See, Sec. 1.501(c)(3)-1(d)(2)(3) of the regulations. See also, Rev. Rul. 67-148, supra; Rev. Rul. 71-545, supra;

[REDACTED]

Rev. Rul. 76-205, supra. Therefore, we are unable to evaluate these aspects of your proposed operations.

One of the activities that you have been engaged in for several years is the [REDACTED] independence day celebrations. However, except for the flyers that you submitted, you provided few details regarding what occurs in connection with the activity. While such celebrations may serve to promote social welfare by providing the community with recreation and may serve as a means to express the community's interest in its history, customs and traditions, the information you submitted does not demonstrate that the activities advance an exempt purpose within the meaning of section 501(c)(3). See, sec. 501(c)(4) of the Code; Rev. Rul. 67-148, supra.

You expend a significant amount of your resources on seminars and conferences. However, you failed to provide sufficient information in the application regarding these activities. Also, you failed to provide the additional information that we requested.

Under certain circumstances, establishing a recreational center for a community may qualify as an exempt activity. See, Rev. Rul. 59-310, supra. The recreation center that you propose opening is expressly intended to be operated for the benefit of your members. [REDACTED] provisions of your Constitution limit your membership to individuals who are of [REDACTED]. This restricts the right to use the facility to members of a specific ethnic group to the exclusion of members of other ethnic groups. An activity conducted under these circumstances is not organized and operated exclusively for charitable purposes and serves a nonexempt purpose. Rev. Rul. 67-325, supra.

The information that you have provided supports a finding that you are organized and operated to serve private rather than public interests, which is a nonexempt purpose. Sec. 1.501(c)(3)-1(d)(1)(ii) of the regulations. A single nonexempt purpose, if it is more than insubstantial, may preclude exemption under section 501(c)(3). Section 1.501(c)(3)-1(c)(1) of the regulations; Better Business Bureau, supra. From the facts presented, even if you were able to demonstrate that you engaged in some exempt activities, any educational purposes to be served by you would be minor compared to the social and recreational activities. See, St. Louis Science Fiction, supra; Spanish American Cultural Association, supra.

You have failed to conduct many of the activities that would potentially be charitable in nature and for those activities that you do conduct, there appears to be significant social and recreational aspects to them. You refer to the opportunities to exchange ideas with [REDACTED] that your members are given. However, you did not respond to our request for specific information concerning the means by which it is determined who will meet with the delegations and for what purposes. You also refer to how in return for their dues, your members are able to enjoy social and cultural activities. You did not respond to our inquiry regarding the type and extent of social and cultural activities you provide to your members.

[REDACTED]

Clearly, your proposed center would substantially serve the private interests of your members. It appears from the information that you provided and statements that you have made that you depend heavily on your membership for support. The use of the center as a recreational and social facility for attracting and retaining members from whom you can solicit support for your other activities would not change the fact that the center, in serving only a segment of the community, does not further a charitable purpose. Spanish American Cultural Association, supra.

The burden is on you to establish that the purposes for which you are organized and the manner in which you propose to operate satisfy the requirements set forth in section 501(c)(3) of the Code for exemption. You have failed to meet this burden. Based upon the information you have provided, we find that you are not operated exclusively for exempt purposes but for (1) substantial non-exempt social and recreational purposes, and (2) to provide substantial benefits to your members.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

Washington

Sincerely,

Manager, Exempt Organizations
Technical Group 2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]